IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2149 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARISHBHAIA CHUNIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner

MR HH PATEL APP for Respondent No. 1

MR KG PANDIT for Respondent No. 2

NOTICE SERVED for Respondent No. 3

MR JT TRIVEDI for Respondent No. 4

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 11/02/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the applicant and Mr.

H.H.Patel, learned APP for respondent no.1. The original complaint in Criminal Case No. 1045/90 is filed against the ex-husband of the complainant, the Branch Manager of the Bank of India and also against the present applicant who is the brother of original accused no.1-husband. According to the complaint of the complainant, certain ornaments were deposited in the locker of the Bank while the marriage between the complainant and the accused no.1 was subsisting. It is alleged that thereafter the ornaments were taken away from the locker by producing a letter of the complainant on which her signature was forged. Thus, the ornaments claimed to be Stridhan of the complainant were taken away by original accused no.1. Only allegation in the complaint against the present applicant is that in complicity with the other accused he made and produced the letter with forged signature and took possession of the ornaments from the locker.

#. It is apparent from the plain reading of the letter supposed to have been forged that only the ex-husband i.e. original accused no.1 was supposed to have been authorized to open the locker. It is nowhere alleged either in the complaint or in the statement of the complainant as to how the present applicant was involved in either the alleged forgery or opening of the locker. Learned APP has emphasized the word "accused" which he states to have been used in plural form and submitted that the involvement of the present applicant was very much alleged. It is difficult to concede to the argument that without making any specific allegation about the involvement in a crime, a person can be implicated and charged for serious offences under sections 467, 468, 471 and 420 of the Indian Penal Code. It is clear from the language of sections 202, 203 and 204 that the Magistrate is required to apply his mind and form an opinion about the sufficient ground for proceeding before taking cognizance of an offence and proceeding to issue summons. Here in the facts of the present case, the summons appears to have been ordered to be issued without any application of mind as far as the present applicant is concerned.

#. Learned APP has relied upon the judgment of the Apex Court in the case of K.M.Mathew vs. State of Kerala (AIR 1992 SC 2206) and submitted that the order issuing the process was an interim order and it can be varied or recalled by the same court. He submitted that therefore, the order should not be interfered with under section 482 of the Code of Criminal Procedure. Surprisingly, in the same judgment, it is also observed that the need to try the accused arises when there is an allegation in the

complaint that the accused has committed a crime. If there is no allegation in the complaint involving the accused in the commission of the crime, it is implied that the Magistrate had no jurisdiction to proceed against the accused. These later observations more accurately apply to the facts of the present case as practically, no case is made out with any specific allegation against the present applicant.

#. In the result, this application is allowed and the process and proceedings initiated against the present applicant are quashed and set aside. Rule is made absolute.

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